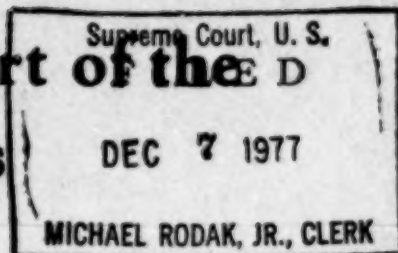


**In the Supreme Court of the
United States**

October Term, 1977

No. 77-397



ROBERT R. SCOTT, dba SLICK NICK'S,

Appellant,

vs.

**DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA, and ALCOHOLIC
BEVERAGE CONTROL APPEALS BOARD,**

Appellees.

**ON APPEAL FROM THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

**BRIEF IN OPPOSITION TO
MOTION TO AFFIRM OR DISMISS**

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**BRIEF IN OPPOSITION TO
MOTION TO AFFIRM OR DISMISS**

This brief is filed in opposition to appellee's motion to affirm or dismiss which was filed on or about November 28, 1977 and which was inadvertently entitled "Brief for the Appellees." It is addressed solely to the issue of mootness, which is a new issue raised for the first time by appellees in their motion.

I.

**THIS APPEAL IS NOT MOOT BECAUSE
THE DECISION COULD HAVE
ADVERSE COLLATERAL CONSEQUENCES
AND IS PART OF AN ONGOING DISPUTE**

Appellees' argument that this appeal is moot because the suspension has been served ignores the collateral consequences which can result from such a final conviction. The California Department of Alcoholic Beverage Control commonly uses prior disciplinary orders that have become final as the basis for enhancement of penalty. An order is considered final only when all judicial review has been exhausted. Thus, if the instant decision is allowed to become final it may be used against appellant in future disciplinary actions before the department. The department could also use it as a basis for denying a future application by appellant for another license.

The law relating to determination of mootness has advanced substantially since *St. Pierre v. United States* (1943) 319 U.S. 41, 63 S. Ct. 910, 87 L.Ed. 1199. The leading case is now *Sibron v. State of New York* (1968) 392 U.S. 40, 88 S. Ct. 1889, in which the development in the law is thoroughly reviewed at pages 50 to 58, and which concludes at page 58 that:

"A criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction."

The substantial collateral consequences of a final decision against appellant have already been noted. This is a direct appeal from a final decision in the highest state court in which review could be sought and should be heard.

Alternatively, this appeal is not moot because it is a part of a continuing controversy which survives the particular suspension of appellant's license. *Abood v. Board of Education* (1977) 97 S. Ct. 1782, 1790. Appellee department has filed a subsequent accusation against appellant, charging violation of the same rules, in which the department seeks to revoke appellant's license, and in which the same constitutional issues will be litigated. Thus, the issues raised in this appeal are of continuing vitality between the parties and are certainly neither advisory nor abstract.

Respectfully submitted,
KENNETH P. SCHOLTZ
Attorney for Appellant